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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CECILLE ALICIA CREVELLE, Defendant and Appellant.	E061958 (Super.Ct.Nos. FVA1001492 & FVA1101051) OPINION

APPEAL from the Superior Court of San Bernardino County. Gerard S. Brown, Judge. Affirmed as modified with directions.

Steven S. Lubliner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne G. McGinnis, and Jennifer B. Truong, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant and appellant Cecille Alicia Crevelle guilty of brandishing a firearm at a person in a motor vehicle. (Pen. Code,[1] § 417.3.) A trial court imposed the aggravated sentence of three years in county jail, but suspended execution of it and placed defendant on five years felony probation, with 365 days in county jail.

On appeal, defendant contends: (1) the trial court should be ordered to state its reasons for failing to include a period of mandatory supervision in the sentence it imposed, pursuant to section 1170, subdivision (h); (2) defendant is entitled to additional days of presentence custody credit; and (3) the sentencing minute order should be corrected to reflect that the court found that a motor vehicle was not used in the commission of the offense. The People concede, and we agree, that defendant should receive more presentence credits than the court awarded her and that the sentencing minute order should be corrected. Therefore, we remand the matter for the trial court to recalculate the credits and correct the minute order. In all other respects, the judgment is affirmed.

PROCEDURAL BACKGROUND

On September 23, 2010, defendant was arrested and booked into custody. She was released the next day.

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[1] All further statutory references will be to the Penal Code, unless otherwise noted.

On July 12, 2011, defendant was arrested and booked into custody again. She was released on July 19, 2011.

At a hearing held on December 16, 2011, defense counsel declared a doubt as to defendant's competency. As a result, the court suspended the proceedings and referred defendant to a psychiatrist.

On January 27, 2012, the court found defendant incompetent to stand trial. It referred the matter to the California Department of Health Care Services, Mental Health Services Division (Department of Mental Health) for a placement recommendation. The criminal proceedings remained suspended.

On February 24, 2012, the court ordered defendant committed to Patton State Hospital (Patton) until her competence was restored. She was admitted to Patton on April 3, 2012.

On June 5, 2012, a staff psychiatrist from the Department of Mental Health wrote a report declaring defendant competent to stand trial. On June 15, 2012, the Medical Director at Patton signed a certification of mental competence, certifying that defendant was mentally competent.

On July 9, 2012, defendant appeared in court in custody. The court found her competent to stand trial and reinstated the criminal proceedings.

On July 14, 2012, defendant was released from custody on bail.

Subsequently, the instant case was consolidated with another case against defendant. The court ordered an amended information filed and then a second amended information filed.

Trial proceedings eventually began on July 1, 2014. On July 10, 2014, a jury found defendant guilty of brandishing a firearm at a person in a motor vehicle. (§ 417.3.)

The court held a sentencing hearing on August 8, 2014. The parties stipulated to a three-year suspended sentence. The court made a finding that no motor vehicle was used in the commission of the offense. The court imposed the aggravated term of three years in county jail, but suspended execution of it and placed defendant on five years felony probation, with 365 days in county jail. It also awarded defendant 184 days of presentence custody credits (152 actual and 32 conduct).

ANALYSIS

I. The Trial Court Was Not Required to State Reasons for Not Including a Period of Mandatory Supervision

Defendant argues that the matter should be remanded for the trial court to state its reasons for failing to include a period of mandatory supervision in the sentence it imposed and suspended under section 1170, subdivision (h). No remand is necessary.

Section 1170, subdivision (h)(5), provides that: "Unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend execution of a

concluding portion of the term for a period selected at the court's discretion." (§ 1170, subd. (h)(5)(A).) "The portion of a defendant's sentenced term that is suspended pursuant to this paragraph shall be known as mandatory supervision." (§ 1170, subd. (h)(5)(B).) California Rules of Court, rule 4.415(a), similarly provides that: "When imposing a term of imprisonment in county jail under section 1170[, subdivision] (h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case." California Rules of Court, rule 4.415(d) provides that: "[W]hen a court denies a period of mandatory supervision in the interests of justice, the court must state the reasons for the denial on the record."

Defendant has forfeited her claim for failure to object below. The waiver doctrine applies "'to claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices.'" (*People v. Tillman* (2000) 22 Cal.4th 300, 302.) Thus, unless there is a timely objection at the time of sentencing, the reviewing court will not consider such issues. Here, defendant failed to raise her claim below; therefore, it is waived.

Notwithstanding the waiver, defendant's claim is meritless. Section 1170, subdivision (h)(5), applies only "when imposing a sentence pursuant to paragraph (1) or (2)" of section 1170, subdivision (h). (§ 1170, subd. (h)(5)(A).) Similarly, California Rules of Court, rule 4.415(a) and (d) apply when a court imposes a term of

imprisonment in a county jail under section 1170, subdivision (h). Mandatory supervision is when a court suspends execution of the concluding portion of a defendant's sentence. Section 1170, subdivision (h)(5)(B), provides that: "During the period of mandatory supervision, the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation." The requirement in California Rules of Court, rule 4.415(d) that the court state its reasons for denying a period of mandatory supervision on the record does not apply here since the court suspended defendant's sentence and placed her on probation for a period of five years. In other words, the court did not impose a term of imprisonment, and it did not deny a period of mandatory supervision. As such, it was not required to make any statement pursuant to California Rules of court, rule 4.415. Therefore, contrary to defendant's claim, no remand is necessary.

II. Defendant is Entitled to Additional Days of Presentence Credits

The court awarded defendant 184 days of presentence credits, which consisted of 152 actual days and 32 days under section 4019. Defendant argues that the court incorrectly calculated her presentence custody credits because it did not award her section 4019 credits for two periods of time: (1) the period between the date the court ordered her committed to Patton and the date she was actually admitted for treatment; and (2) the period between the date a hospital psychiatrist conclusively found her

competence had been restored and the date she was released on bail. The People correctly concede.

A. *Relevant Law*

Defendants convicted of felony offenses are entitled to presentence custody credit for time served in custody prior to the commencement of their prison sentence. (§ 2900.5.) Partial days in custody are treated as whole days. (*People v. Smith* (1989) 211 Cal.App.3d 523, 526.) Defendants are also entitled to presentence conduct credits under section 4019. However, a defendant is not entitled to conduct credits for time spent in a state hospital while subject to a finding of incompetency. (*People v. Waterman* (1986) 42 Cal.3d 565, 568-569 (*Waterman*); *People v. Bryant* (2009) 174 Cal.App.4th 175, 182 (*Bryant*).) "This is because the period of confinement while the accused is hospitalized is not considered punitive." (*Id*. at p. 177.) A defendant can start earning section 4019 credits when it is conclusively determined by the state hospital staff that he is competent to stand trial, even if there is a delay in the issuance of the certificate of mental competence. (*Id*. at p. 184.)

B. *Defendant's Time in Custody*

On September 23, 2010, defendant was arrested and booked into custody. She was released on September 24, 2010.

On July 12, 2011, defendant was arrested and booked into custody again. She was released on July 19, 2011.

On February 24, 2012, the court ordered defendant committed to Patton until her competence was restored. She was not admitted to Patton until April 3, 2012.

On June 5, 2012, a staff psychiatrist from the Department of Mental Health wrote a report declaring defendant competent to stand trial. On June 15, 2012, the Medical Director at Patton signed a Certification of Mental Competence.

On July 9, 2012, the court found defendant competent to stand trial.

On July 14, 2012, defendant was released from custody on bail.

C. *Defendant's Credits Must Be Recalculated*

The trial court properly awarded defendant 152 days of actual custody credits for her time in custody from: (1) September 23, 2010 to September 24, 2010; (2) July 12, 2011 to July 19, 2011; and (3) February 24, 2012 through July 14, 2012. It also correctly awarded her credits under section 4019 for the time periods from September 23, 2010 through September 24, 2010, from July 12, 2011 through July 19, 2011, and from July 9, 2012 through July 14, 2012. However, as the parties agree, the court erred in its calculation of the section 4019 credits during the period from February 24, 2012 (the day the court ordered defendant committed to Patton) to July 9, 2012 (the day the court deemed her competence restored). It should have awarded her section 4019 credits for the days she spent in custody from February 24, 2012 (the day the court ordered her committed to Patton for treatment) through April 30, 2012 (the day she was actually admitted to Patton), since she was in jail during this delay in admission to Patton. The court properly did not award section 4019 credits during the

time defendant spent in treatment at Patton. (*Waterman, supra*, 42 Cal.3d at pp. 568-569.) However, it should have awarded section 4019 credits beginning again from the day the state psychiatrist declared her competent to stand trial (June 5, 2012), rather than the day the court found her competent to stand trial (July 9, 2012). (See *Bryant, supra*, 174 Cal.App.4th at p. 184.) In other words, the court should have awarded section 4019 credits for the period from June 5, 2012 (the day the psychiatrist declared her competent to stand trial) through July 14, 2012 (the day defendant was released from custody).

We note that, while the parties agree that defendant is entitled to section 4019 credits for these periods of time, they disagree on the specific number of credits that should be awarded. Thus, we remand the matter for the trial court to recalculate the conduct credit award. (See *Bryant, supra*, 174 Cal.App.4th at p. 185.)

III. The Sentencing Minute Order Should Be Corrected

Defendant contends, and the People concede, that the minute order from the sentencing hearing should be corrected to reflect the court's finding that a motor vehicle was not used in the commission of the offense.

At the sentencing hearing, defense counsel informed the court that defendant's mother depended on her to drive her to medical appointments. He further told the court that if it found that a motor vehicle was used in the commission of the offense, defendant's driver's license would be revoked or suspended. The revocation or suspension of her license would place an extreme burden on her and her mother.

Thus, the court found that no motor vehicle was used in the commission of the offense. It also added a probation term that limited defendant's use of a motor vehicle to driving her mother to and from doctors' appointments, getting household essentials, and driving to court and the probation department office. The minute order from the sentencing hearing reflects the probation condition added by the court, but it also erroneously shows the court made a finding that a motor vehicle *was* used in the commission of the offense.

When there is a discrepancy between the judgment as orally pronounced and as entered in the minute order, the oral pronouncement controls. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn 2.) A court "has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts." (*In re Candelario* (1970) 3 Cal.3d 702, 705.) It is evident that the superior court clerk's error in indicating that the court found that a motor vehicle was used was inadvertent. Accordingly, we will direct the superior court clerk to correct the minute order.

DISPOSITION

The superior court clerk is directed to amend the August 8, 2014 minute order to reflect that the court made a finding that no motor vehicle was used in the commission of the offense. Furthermore, the judgment is modified to award defendant section 4019 conduct credits in accordance with this opinion. Upon remittitur issuance, the trial court is to recalculate the conduct credit award and so modify the

judgment. The clerk is then to prepare an amended sentencing minute order and amended abstract of judgment and forward copies to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.